

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 SCCT-01 CIAE-00 DODE-00 PM-04

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FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 1946

AMEMBASSY BERLIN UNN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 214

E.O. 11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJECT: POSSIBLE FEDERAL PROSECUTION OF
LORENZ KIDNAPPERS

REF: A) USBERLIN 200, B) USBERLIN 159,

C) USBERLIN 133, D) USBERLIN 43

1. SUMMARY: BRITISH MISSION HAS AGREED WITH US TO
RECOMMEND TO EMBASSIES THAT NO OBJECTION BE RAISED
TO FEDERAL PROSECUTION IN BERLIN OF MEMBERS OF JUNE
2 MOVEMENT AND THAT ALLIES AND FRG CONCENTRATE ON
PRESENTATIONAL ASPECTS OF SUCH A PROSECUTION IN ORDER
TO AVOID GIVING SOVIETS IMPRESSION OF A POLITICAL
DEMONSTRATION. FRENCH MISSION HAS CONCURRED IN
RECOMMENDING PRESENTATIONAL GUIDELINES FOR CON-
SIDERATION IN EVENT EMBASSIES DO NOT WISH TO FORBID
PROSECUTION. ALTHOUGH THEY APPEAR TO BE LEANING
TOWARD VIEW THAT PROSECUTION MUST EVENTUALLY BE
PERMITTED, FRENCH FEEL THEY MUST DEFER ON THAT
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BASIC QUESTION TO THEIR EMBASSY WITHOUT MAKING

RECOMMENDATION. END SUMMARY.

2. BRITISH MISSION CONFIRMED FEBRUARY 3 THAT IT SHARES OUR BELIEF THAT THERE APPEARS TO BE NO LEGAL BASIS ON WHICH TO OBJECT TO PROSECUTION BY OFFICE OF FEDERAL PROSECUTOR FOR OFFENSES ARISING OUT OF EITHER LORENZ KIDNAPPING, VON DRENKMANN MURDER, OR SUCH OTHER CRIMES, INCLUDING BANK ROBBERY, AS ARE DETERMINED TO BE INEXTRICABLE PART OF JUNE 2 MOVEMENT'S ACTIVITIES. THEY ALSO INDICATED THEY SHARE OUR JUDGMENT THAT IT NOT POLITICALLY REALISTIC TO REVERSE MAHLER PRECEDENT WITH ALL THAT WOULD IMPLY ABOUT ALLIED RETREAT ON VITAL QUESTIONS OF TIES AND LEGAL UNITY AS THEY ARE PERCEIVED BY GERMANS. FRENCH MISSION, ALTHOUGH NOW MORE SYMPATHETIC TO OUR POSITION AND THAT OF BRITISH, FEEL UNABLE TO MAKE ANY RECOMMENDATION ON BASIC QUESTION IN ABSENCE OF INDICATION OF THEIR EMBASSY'S POSITION. FRENCH DID JOIN, HOWEVER, IN RECOMMENDATION THAT, IF EMBASSIES ULTIMATELY AGREE NOT TO RAISE OBJECTION TO FEDERAL PROSECUTION, FURTHER BONN GROUP CONSULTATIONS WITH FRG CONCENTRATE ON DEVELOPMENT OF GUIDELINES INTENDED TO ALLOW FEDERAL PROSECUTION TO RETAIN APPEARANCE OF NORMAL LEGAL EVENT AND NOT A POLITICAL DEMONSTRATION. DRAFT GUIDELINES AGREED BY MISSIONS INCLUDE FOLLOWING:

A. ANNOUNCEMENT THAT CHARGES HAVE BEEN FILED BY FEDERAL AUTHORITIES SHOULD COME FROM DR. BUBACK'S REPRESENTATIVES IN BERLIN, NOT FROM KARLSRUHE CENTRAL OFFICE.

B. ANNOUNCEMENT SHOULD INDICATE THAT IT IS LOCAL OFFICE OF FEDERAL PROSECUTOR, NOT DR. BULBACK HIMSELF, THAT WILL BE HANDLING CASE ON DAILY BASIS. WE WOULD ASK FRG TO SEEK TO DISSUADE DR. DUBACK FROM PARTICIPATING PERSONALLY BEFORE COURT IN BERLIN. WE UNDERSTAND FROM HERZ THAT THIS CONFORMS TO SENAT'S WISHES AS WELL.

C. ANNOUNCEMENT SHOULD FURTHER NOTE THAT CHARGES ARE BEING BROUGHT AND CASE IS TO BE PROSECUTED UNDER LAWS IN FORCE IN BERLIN. IT WOULD BE DESIRABLE, THOUGH IT MAY BE DIFFICULT TO INCLUDE POINT IN SUCH CONFIDENTIAL

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AN ANNOUNCEMENT, THAT LAWS CITED INCLUDE BK/O(51)63. THAT POINT MIGHT IN ANY EVENT BE NOTED AS PART OF ANY PRESS BRIEFINGS GIVEN BY REPRESENTATIVES OF SENAT OR OF FEDERAL PROSECUTOR'S OFFICE.

D. EMPHASIS SHOULD NOT BE PLACED IN PUBLIC ANNOUNCEMENTS ON SPECIAL SECURITY ASPECTS IN CASE OR SPECIAL SECURITY CONCERNS OF FRG, BUT RATHER ON POINT THAT ACTIVITIES OF JUNE 2 MOVEMENT HAD PRACTICAL CON-

SEQUENCES FOR FRG AND FOR LAENDER IN FRG, PARTICULARLY IN CONNECTION WITH RELEASE OF PRISONERS AND COMMANDERING OF AN AIRCRAFT DURING LORENZ KIDNAPPING.

E. FRG SHOULD UNDERTAKE TO SEE TO IT THAT DR. BUBACK AND HIS STAFF ARE AWARE OF NEED TO AVOID STATEMENTS OR ACTIONS DURING COURSE OF TRIAL THAT MIGHT IMPLY THEY WERE NOT COGNIZANT OF BERLIN'S SPECIAL STATUS AND OF RESERVED ALLIED RIGHTS AND RESPONSIBILITIES.

3. COMMENT: THERE APPEARS TO BE LITTLE MORE THAT MISSION CAN DO AT THIS STAGE IN BERLIN. IN VIEW OF GROWING PRESS INTEREST IN QUESTION OF FEDERAL PROSECUTION, EMBASSY MAY WISH TO CONSIDER MAKING EFFORT TO REACH CONSENSUS ON BASIC QUESTION AND PROPOSED GUIDELINES AND THEN RAISING SUBJECT AGAIN WITH FRG EVEN BEFORE GERMAN REP REPORTS RESULTS OF DR. DUBACK'S REVIEW OF INVESTIGATION MATERIALS TRANSMITTED TO HIM BY BERLIN PROSECUTOR.
GEORGE

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